

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

LARRY WOOTEN

PETITIONER

VS.

CIVIL ACTION NO. 3:12CV26TSL-JMR

SHERIFF SIMMONS AND WARDEN
HUFFMAN

RESPONDENTS

ORDER

This cause came on this date to be heard upon the report and recommendation of United States Magistrate Judge John M. Roper, and the court, having fully reviewed the report and recommendation entered in this cause on October 16, 2013, and being duly advised in the premises, finds that said report and recommendation should be adopted as the opinion of this court.¹

IT IS, THEREFORE, ORDERED that the report and recommendation of United States Magistrate Judge John M. Roper entered on October 16, 2013, be, and the same is hereby adopted as the finding of this court, and the petition for writ of habeas corpus is hereby dismissed with prejudice.

¹ The court notes that while Wooten did not file an objection to report and recommendation, he did file a "petition to withdraw writ of habeas corpus without prejudice," by which he sought to voluntarily dismiss his habeas petition in this court so that he could return to the Mississippi Supreme Court to seek a belated writ of certiorari and thereby exhaust his claims. The respondents opposed Wooten's motion on the grounds of futility.

A review of the Mississippi Supreme Court's website reveals that on October 31, 2013, Wooten filed a motion seeking a writ of certiorari from the Mississippi Supreme Court, which was denied by the court on November 12, 2013. Wooten v. Mississippi, No. 2010-CP-01263-SCT, (Miss. Nov. 12, 2013). Accordingly, Wooten's motion to voluntarily dismiss will be denied as moot.

It is further ordered that a certificate of appealability should not issue. Petitioner has failed to demonstrate that "jurists of reason would find it debatable whether [this] court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

A separate judgment will be entered herein in accordance with this order as required by Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this 1st day of April, 2014.

/s/ Tom S. Lee
UNITED STATES DISTRICT JUDGE